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EXAMINER	
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ART UNIT	PAPER NUMBER
3689	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/667,755	AMAITIS ET AL.	
	Examiner	Art Unit	
	Gerardo Araque Jr.	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/13/08; 11/20/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. **Claims 1 – 14** are rejected under 35 U.S.C. 101 because based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiner is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should recite the other statutory class (the thing or product) to which it is sufficiently tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not sufficiently tied to another statutory class and can be performed without the use of a particular apparatus. Thus, **Claims 1 – 14** are non-statutory since they may are not tied to another statutory class.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 2 and 16** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. In regards to **claim 2 and 16**, the Examiner is unsure what type of betting is being placed. Is it a point spread, over/under, or spread betting? For the purposes of this examination the Examiner will assume that spread betting is being claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 1, 3 – 5, 9, 11 – 15, 20, and 22 – 23** are rejected under 35 U.S.C. 102(e) as being anticipated by **Downes (US Patent 6,910,965 B2)** in view of **The New York Times (http://query.nytimes.com/gst/fullpage.html?res=9F03E0D81139F93AA15752C0A9659C8B63&partner=rssnyt&emc=rss & http://query.nytimes.com/gst/fullpage.html?res=950DE7D81F31F936A15755C0A96F948260)**.

9. In regards to **claims 1 and 15**, **Downes** discloses a method and system of managing bets, comprising:

receiving a first bet at a first quote, the first bet having an associated first unit stake, the first quote corresponding with the total number of units potentially earned by

a participant in a plurality of events **(Col. 2 Lines 45 – 47; Col. 4 Lines 49 – 50; Col. 7 – 8 Lines 50 – 18; wherein a bet includes a quote that is going to be placed on a participant)**;

receiving results of each of the plurality of events, the results comprising the positioning of the particular participant in each of the plurality of events **(See at least Claim 1 Part E)**;

for each of the plurality of events, determining a number of units earned by the participant based at least in part on the positioning of the participant in the event, the determination made by a processor **(See at least Col. 18 Lines 16 – 37)**; and

determining an amount of a payout for the first bet based at least in part on the first unit stake, the first quote, and the total number of units earned by the participant in the plurality of events **(Col. 6 Lines 43 – 46; Wherein part (a) of the claim Downes discloses that a bet is placed based on a quote, stake, and units earned by a participant. Since the payout is based on the bet it is obvious to one having ordinary skill in the art that the payout would also be based on the stake, quote, and units earned as well.)**.

Downes discloses all of the limitations above and further discloses that the method and system can be used for auto racing **(Claim 12)** and that pari-mutuel wagering is old and well known to be used for horse racing. However, **Downes** fails to explicitly disclose:

for each of the plurality of events, determining a number of units earned by the participant based at least in part on a purse distribution structure defining a distribution of a purse over a plurality of positions in the event.

The New York Times, however, discloses that it is old and well known for auto racing and horse racing to have a purse distribution system. The purse distribution system is a system where a substantial amount of money **(purse)** is distributed among the participants of a sporting event, such as Nascar and the Super Derby, based on the placing of each participant in the event.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teachings of **New York Times** for **Downes's** sports wagering system to have obviously included a purse distribution structure, which is based on the placing of a participant.

10. In regards to **claim 3**, **the combination of Downes and New York Times** discloses wherein the number of units earned by the participant comprises the amount of money earned by the participant over the course of the plurality of events **(wherein Downes discloses that participant statistics are made available to the user and wherein New York Times discloses a purse distribution structure as discussed above; See at least Downes Col. 15 – 16)**.

11. In regards to **claim 4**, **Downes** discloses wherein the plurality of events comprises a plurality of horse races and the plurality of participants comprises a plurality of jockeys **(Col. 2 Lines 1 – 2)**.

12. In regards to **claim 5**, **Downes** discloses wherein the plurality of events comprises a plurality of races and the plurality of participants comprises a plurality of drivers **(Claim 12)**.

13. In regards to **claim 9**, **Downes** discloses further comprising, after one or more of the plurality of events has occurred, receiving a second bet defined at least by a second unit stake and a second quote, the second quote corresponding with a total number of units that could be earned by the participant in the plurality of events excluding the one or more events that have occurred **(wherein Downes discloses that several users are able to log onto the system and that the same user can also place several bets at a time and keep track of the user's betting history; See at least Col. 6 Lines 56 – 60)**.

14. In regards to **claims 11 and 22**, **Downes** discloses further comprising, after one or more of the plurality of events has occurred:

receiving a request to settle the first bet **(see at least Col. 11 Lines 50 – 62)**; and

determining an amount of a settlement payment for the first bet based at least in part on the first unit stake, the first quote, and the second quote **(Col. 6 Lines 43 – 46; Wherein Claim 1 part (a) of the claim Downes discloses that a bet is placed based on a quote, stake, and units earned by a participant. Since the payout is based on the bet it is obvious to one having ordinary skill in the art that the payout would also be based on the stake, quote, and units earned as well.)**;

paying out the settlement payment **(see at least Col. 11 Lines 50 – 62)**; and

canceling the first bet **(obviously included once the bet has been settled and since the event relating to the bet is over it is only obvious for the bet to be canceled)**.

15. In regards to **claims 12 and 23, Downes** discloses further comprising, after one or more of the plurality of events has occurred:

receiving a request to settle the first bet **(see at least Col. 11 Lines 50 – 62)**;

determining an amount of a settlement payment for the first bet based at least in part on the first unit stake, the first quote, and the positioning of the participant in each of the one or more events that has occurred **(Col. 6 Lines 43 – 46; Wherein Claim 1 part (a) of the claim Downes discloses that a bet is placed based on a quote, stake, and units earned by a participant. Since the payout is based on the bet it is obvious to one having ordinary skill in the art that the payout would also be based on the stake, quote, and units earned as well.)**;

paying out the settlement payment **(see at least Col. 11 Lines 50 – 62)**; and

canceling the first bet **(obviously included once the bet has been settled and since the event relating to the bet is over it is only obvious for the bet to be canceled)**.

16. In regards to **claim 13, Downes** discloses wherein the plurality of events occur over an extended period of time **(See at least Col. 14 Lines 13 – 36)**.

17. In regards to **claim 14, Downes** discloses wherein the plurality of events occur over a period of time greater than one week **(See at least Col. 14 Lines 13 – 36)**.

18. **Claims 2, 6, 7, 8, 10, 16 – 19, and 21** are rejected under 35 U.S.C. 102(e) as being anticipated by **Downes (US Patent 6,910,965 B2)** in view of **The New York Times (http://query.nytimes.com/gst/fullpage.html?res=9F03E0D81139F93AA15752C0A9659C8B63&partner=rssnyt&emc=rss & http://query.nytimes.com/gst/fullpage.html?res=950DE7D81F31F936A15755C0A96F948260)** and in further view of **Official Notice**.

19. In regards to **claims 2, 6, 7, and 16 – 18, Downes** fails to explicitly disclose a specific type of betting system further comprising:

providing a spread quote comprising an upper index number and a lower index number;

wherein the first quote comprises the upper index number and the first bet comprises a bet that the total number of units earned by the participant will be greater than the upper index number; and

receiving a second bet that the total number of units earned by the participant will be less than the lower index number.

However, **Official Notice** is taken that it is old and well known in the art of gambling that there are numerous types of betting methodologies, such as, but no limited to, point spread, over/under, spread betting, and etc. **Downes** discloses a method and system that allows a user to place bets on various types of sporting events and that the method and system allows for a variety of types of betting to take place. **Downes** further discloses that several users are able to log onto the system and that

the same user can also place several bets at a time and keep track of the user's betting history. As a result, the Examiner asserts that it would have been well within the ability of one having ordinary skill to have incorporated spread betting into the system of **Downes** since the combination is only uniting old elements with no change in their respective functions and which would yield predictable results.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Downes** in view of **Official Notice** because this is a case where the improvements are no more than the predicable use of prior art elements according to their established functions.

20. In regards to **claims 8 and 19**, **Downes** discloses **Downes** discloses several types of payout methods, but fails to explicitly disclose a payout method comprising:

wherein determining the payout for the first bet comprises multiplying the unit stake by the difference between the first quote and the total number of units earned by the participant in the plurality of events.

However, **Official Notice** is taken that there are numerous types of payout methods, which are all dependent on the type of bet placed, such as money line bets, spread bets, over/under bets, and etc. As a result, the Examiner asserts that it would have been well within the ability of one having ordinary skill in the art to know how a payout should be made to a winner depending on the type of bet that was placed.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Downes** in view of **Official Notice** because this is a

case where the improvements are no more than the predicable use of prior art elements according to their established functions.

21. In regards to **claims 10 and 21**, **Downes** fails to disclose wherein the second bet locks in a gain or loss associated with the first bet.

However, **Official Notice** is taken that in the art of gambling it is old and well known to place multiple bets/wagers and that it is also old and well known for a gambler to cash out to prevent possible future losses or to secure current gains. An example would be where a user is betting on a team to make it to the final four, but half way through the season the user's team has had considerable losses and would be unable to win overall. Another example would be if a user is in a casino and currently up by a considerable amount it is known for the user to cash out to secure current financial gains because the user feels they may lose on the next hand, but still continue playing after the hand has passed or move to a different table playing the same game.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify **Downes** in view of **Official Notice** because this is a case where the improvements are no more than the predicable use of prior art elements according to their established functions.

Response to Arguments

22. Applicant's arguments filed **10/14/2008** have been fully considered but they are not persuasive.

Rejection under 35 USC 101

23. The rejection under 35 USC 101 is maintained, but has been reworded to better clarify the issue at hand. Specifically, the Examiner asserts that there is not a sufficient enough tie to another statutory category.

Rejection under 35 USC 112, second paragraph

24. Rejections under 35 USC 112, second paragraph, of **claims 1, 15, 22, and 23** are withdrawn due to amendments.

25. Rejections under 35 USC 112, second paragraph, of **claims 2 and 16** are maintained. The Examiner asserts that the language of the claim continues to be unclear because one of ordinary skill in the art would not be capable of determining when there is an infringement of the claim. In other words, one of ordinary skill in the art would not be able to determine if they are infringing upon the claim if they are conducting a wager/bet using point spread, over/under, or spread.

Rejection under 35 USC 103

Claims 1 and 15

26. Specifically, the applicant argues that the, "...cited references fail to teach, suggest, or disclose 'a first bet at a first quote...corresponding with a total number of units that could be earned by a participant in a plurality of events.'"

However, the Examiner asserts that **Downes** does, indeed, disclose, "a first bet at a first quote...corresponding with a total number of units that could be earned by a participant in a plurality of events." **Downes** discloses a method and system where a user places a bet at a first quote for a particular event. With that said, one of ordinary skill in the art would have known that a bet obviously corresponds to a total number of

units that could be earned. In other words, the Examiner asserts that a bet obviously includes a total number of units that could be earned by a participant since a bet is an agreement made by at least two parties wherein one of the parties has the potential to being entitled to some form of payout (units). One of ordinary skill in the art looking upon **Downes** would have found it obvious that a method and system has been provided wherein a user is capable of entering a bet/wager wherein the user has the potential to receive the earnings associated with winning the wager/bet.

27. Applicant continues to argue that the, "...cited references fail to teach, suggest, or disclose 'for each of the plurality of events, determining a number of unites earned by the participant based at least in part on the positioning of the participant in the event," and that, "...the Office Action fails to provide a rational and articulated reason for combining the teachings of *Downes* and *New York Times*."

However, **Downes** disclose that the participant (in this case a Hockey player) is assigned a ranking and wherein the ranking is associated with a weight to determine a score. One of ordinary skill in the art would have found it obvious that a similar situation can be found in the events of horse racing and auto racing wherein a jockey/driver participates in their corresponding event and depending on their placing in their respective event they are awarded an amount of money for that specific placing. To further teach this limitation **The New York Times** was provided to disclose that it is old and well known for such a purse distribution system to exist and put into practice for at least horse racing and auto racing.

The Examiner asserts that the combination is merely the combination of known elements wherein each of the elements would have acted the same and wherein the outcome is predictable. KSR forecloses applicant's argument that a specific teaching is required for a finding of obviousness.

KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396. The above claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither applicant's Specification nor applicant's arguments present any evidence that modifying **Downes** with the selected elements of **The New York Times** was uniquely challenging or difficult for one of ordinary skill in the art.

Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time of the invention was made to modify the combination of **Downes** with the teachings of **The New York Times** to include a purse distribution structure, which is based on the placing of a participant.

Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Therefore, the combination of **Downes and The New York Times** discloses, "...for each of the plurality of events, determining a number of units earned by the participant based at least in part on the positioning of the participant in the event and a

purse distribution structure defining a distribution of a purse over a plurality of positions in the event."

Claims 2, 6—8, 10, 16 – 19, and 21

28. Regarding the traversal of the provided Official Notice the Examiner assert that a "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. In re Boon, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). MPEP 2144.03 Reliance on Common Knowledge in the Art or "Well Known" Prior Art. In view of

applicant's failure to adequately traverse official notice, the following are admitted prior art::

providing a spread quote comprising an upper index number and a lower index number;

wherein the first quote comprises the upper index number and the first bet comprises a bet that the total number of units earned by the participant will be greater than the upper index number;

receiving a second bet that the total number of units earned by the participant will be less than the lower index number;

wherein determining the payout for the first bet comprises multiplying the unit stake by the difference between the first quote and the total number of units earned by the participant in the plurality of events;

wherein the second bet locks in a gain or loss associated with the first bet.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 4:00PM.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on (571) 272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. A./
Examiner, Art Unit 3689
12/28/2008

/Janice A. Mooneyham/
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